

TOWN OF ARLINGTON
OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

DECLARATION OF TRUST

WITNESSETH

WHEREAS, the Town of Arlington first created a post-employment health insurance trust fund following passage of Chapter 12 of the Acts of 1998 (“An Act Authorizing the Town to Establish a Post Employment Health Insurance Trust Fund”); and

WHEREAS, appropriations were made by Arlington Town Meeting to the fund established by Chapter 12 of the Acts of 1998, known as the “Retiree Health Care Trust Fund,” under the custody and management of the Arlington Town Treasurer; and

WHEREAS, the Town of Arlington subsequently established an “Other Postemployment Benefits Trust Fund”(“First OPEB Trust Fund”) by Chapter 161 of the Acts of 2005, maintaining the Town Treasurer as custodian of such funds, but appointing the Arlington Contributory Retirement Board (“Retirement Board”), as provided for in G.L. c. 32 sec. 20(b)(4) as trustees of such funds; and

WHEREAS, Chapter 161 of the Acts of 2005 both empowered the Retirement Board to approve of all investments made by the custodian of funds, and authorized transfer of the balance of the Retiree Health Care Trust Fund to the First OPEB Trust Fund on July 1, 2007; and

WHEREAS, the Town of Arlington has duly re-adopted M.G.L. c.32B, §20, as amended by Chapter 218 of the Acts of 2016, by a vote of the Arlington Town Meeting, as the Town of Arlington legislative body, on April 26, 2023 and has authorized the creation of a Health and Welfare Trust Fund which shall be known as the Arlington Other Post-Employment Benefits Liability Trust Fund (“Second OPEB Trust”) on July 1, 2023;

WHEREAS, the Town of Arlington has established certain post-employment benefits, other than pensions, for eligible retired employees and their eligible dependents; and

WHEREAS, consistent with the provisions of GASB Statements 74 and 75, the funds which will be contributed to the OPEB Trust, as and when received by the OPEB Trust, and earnings and losses thereon shall constitute a trust fund which shall be irrevocable and shall be

held for the benefit of eligible retirees in accordance with the Town of Arlington’s retiree health plan; and

WHEREAS, consistent with the provisions of GASB 74 and GASB 75, the OPEB Trust assets shall be legally protected from creditors of the Town of Arlington; and

WHEREAS, it is intended that this OPEB Trust shall qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, pursuant to M.G.L. c. 32B, § 20(c), as well as by Town Meeting vote taken on April 26, 2023 (and Chapter 161 of the Acts of 2005), the Treasurer of the Town of Arlington is the custodian of the OPEB Trust; and

WHEREAS, pursuant to M.G.L. c. 32B, §§ 20(d) and (e), Arlington Town Meeting has voted on April 26, 2023 to retain the Retirement Board as its five (5) person OPEB Trust Board of Trustees (originally established as same by Chapter 161 of the Acts of 2005); and

WHEREAS, pursuant to M.G.L. c. 32B, § 20(g), the Arlington Town Meeting voted on April 26, 2023 to authorize investment of OPEB Trust fund monies pursuant to the Prudent Investor Rule established in M.G.L. c. 203C as well as under Chapter 161 of the Acts of 2005); and

WHEREAS, on September 19, 2023, the Arlington Contributory Retirement Board, as the Board of Trustees of the Town of Arlington Health Insurance Trust Fund (“Trust Fund Board”) voted to amend and restate the Trust Fund Declaration pursuant to Article VI, Section 1 of the Trust Fund Declaration; and

NOW, THEREFORE, is hereby established the following amended and restated OPEB Trust:

ARTICLE I

DEFINITIONS

- 1.1 “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.2 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and any successor statute.
- 1.3 “GASB, 74, and 75” shall mean Government Accounting Standards Board, Statement Nos., 74, and 75, accounting and Financial Reporting by Employers for Post-Employment

Benefits Other Than Pensions, as applicable and as may be in effect at the time of this Declaration of Trust

- 1.4 “Governing Body” means the Arlington Contributory Retirement Board.
- 1.5 “Governmental Unit” means the Town of Arlington.
- 1.6 “Investing Authority” means the Board of Trustees designated by the governmental unit to invest and reinvest the OPEB Fund using the investment standard pursuant to M.G.L. c. 32B, § 20.
- 1.7 “Eligible Retiree” means those retirees and/or their spouses and/or dependents who are properly enrolled in a Retirees’ Health Insurance Plan or other OPEB benefit offered by the Town of Arlington, and who qualify as eligible under eligibility rules and guidelines adopted by the Arlington Town Meeting.

ARTICLE II

ESTABLISHMENT AND PURPOSE OF THE TRUST FUND

- 2.1 There is hereby established the Town of Arlington Other Post-Employment Benefits Liability Trust Fund (“OPEB Trust”).
- 2.2 The purpose of this OPEB Trust is to collect, hold, manage, and preserve assets properly appropriated by the Arlington Town Meeting, to meet the current and future liabilities of the Town of Arlington for the group health insurance benefits for retirees and their dependents all in accordance with the requirements of M.G.L. c. 32B, § 20.
- 2.3 Such assets include all the money and property, of every kind and character, including principal and income, held by the OPEB Trust.
- 2.4 In no event may any individual receive any benefit from this Trust Fund, unless such individual is specifically authorized by the Arlington Town Meeting to be an “Eligible Retiree.”

ARTICLE III

DESIGNATION OF BOARD OF TRUSTEES

- 3.1 The OPEB Trust shall be administered by a five (5) person Board of Trustees (the “Board”), pursuant to M.G.L. c. 32B. §§ 20(d) and (e).

- 3.2 The composition of the Board will be the Arlington Contributory Retirement Board in a manner consistent with G.L. c. 32 sec. 20(4)(b), which provides for a five (5) member board of consisting of:
- a. The Town Accountant/Comptroller;
 - b. One member appointed by the Arlington Select Board;
 - c. Two members to be elected by members in or retired from service of the Arlington Retirement system; and
 - d. One member chosen by a majority of the elected and appointed members of the Retirement Board.
- 3.3 The term of the elected members of the Board will be for three (3) years and the term of the appointed members of the Board will be for five (5) years, but in all events consistent with their terms as members of the Arlington Contributory Retirement Board.
- 3.4 All trustee elections shall be conducted, to the extent practical, consistent with the procedures set forth in 840 CMR 7.01-7.13 and not in contradiction to any of the requirements of M.G.L. c. 32B, § 20.
- 3.5 Should a trustee no longer possess the statutory qualifications for Board membership, that person shall simultaneously, by action of this Declaration of Trust, be considered to have resigned his/her position on the Board. Some examples would include, but not be limited to the following:
- a. The Town of Arlington employee trustee leaves the Town of Arlington by retirement, resignation, termination, death, or any other reason; the (Town of Arlington officer trustee ceases to be an officer of the Town of Arlington by retirement, resignation, termination, death, or any other reason; the citizen trustee no longer resides in one of the seventeen (17) participating (Town of Arlington communities; or the investment experience trustee no longer has the experience required by the Town of Arlington.
- 3.6 Once a trustee has resigned, either by action of the trustee or by action of the Declaration of Trust, from the Board, said trustee shall promptly and without unreasonable delay, deliver to the Town of Arlington Treasurer's Office, located at 730 Massachusetts Avenue, Arlington, MA 02476, any and all records, documents, or other items in his/her possession or under his/her control belonging to the OPEB Trust.

- 3.7 If a vacancy on the Board occurs prior to the end of the trustee's term, a trustee may be elected or selected in the same manner as predecessor trustee to serve for the remainder of the term.
- 3.8 Trustees shall be eligible for re-appointment and re-election.
- 3.9 All terms applying to the Board and any individual trustee may be amended, from time to time and with no less than thirty (30) days written notice to the Arlington Town Meeting, by the Board and consistent with M.G.L. c. 32B, § 20.

ARTICLE IV ADMINISTRATION OF TRUST FUND

- 4.1 The Board shall keep records of account and records of all the trustee's transactions. All such records of account and records of transactions shall be subject to inspection and audit as required by municipal finance laws, rules and regulations.
- 4.2 These records, along with any Original Trust related documentation, shall be stored at the Town of Arlington Treasurer's Office, located at 730 Massachusetts Avenue, Arlington MA 02476. No Trust documents or Trust related documents shall be removed from this address.
- 4.3 The Board shall provide reports to the Arlington Town Meeting on an annual basis and as otherwise requested, in writing, by the Arlington Town Meeting regarding the status and investments of the OPEB Trust and any actions taken with regard to the assets of the OPEB Trust.

ARTICLE V POWERS AND DUTIES OF THE OPEB BOARD OF TRUSTEES

- 5.1 In operating and administering the OPEB Trust, the Board shall have the power and/or duty:
 - a. To establish the policies and rules pursuant to which the OPEB Trust is to be operated and administered which shall be consistent with M.G.L. c.32B, §20, as it may be amended from time to time.
 - b. To make, adopt, or repeal rules and regulations not inconsistent with the terms of this Declaration of Trust, as amended, if the Board may deem it necessary or

desirable for the conduct of their business and the government of themselves, their officers, agents and other representatives.

- c. To pay or provide for the payment of all reasonable and necessary expenses of administering the affairs of the OPEB Trust, including but without limitation to the matters herein set forth, all expenses which may be incurred in connection with the establishment of the OPEB Trust, the employment of such administrative, investment, legal, accounting, expert, consultative, and clerical assistance, the purchase or leasing of such premises and the purchase for lease of such materials, supplies and equipment as the Board, in its discretion, find necessary or appropriate in the performance of their duties; provided, however, that there are sufficient funds in the OPEB Trust to pay for such reasonable and necessary expenses of administering the affairs of the OPEB Trust.
- d. To authorize, transfer and/or expand the corpus and related interest of the OPEB Trust, in accordance with the requirements of M.G.L. c. 32B, § 20
- e. To invest and reinvest any monies in the OPEB Trust as the Board sees fit, in its sole discretion, as long as such investments are made in accordance with applicable law, including, but not limited to, the Prudent Investor Rule pursuant to M.G.L. c. 203C, M.G.L. c. 44, § 54, or M.G.L. c. 32A, §§ 24 and 24A.
- f. To act in a fiduciary capacity, discharging its duties for the primary purpose of enhancing the value of the OPEB Trust, acting with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims, and diversifying the investments in the OPEB Trust to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.
- g. To hold sums uninvested, without liability to the Board to pay any interest thereon, as part of the OPEB Trust, in such amounts and for such periods of time as the Board in its sole discretion deems desirable.
- h. To purchase as a general administrative expense of the OPEB Trust so-called director's liability insurance and other insurance for the benefit of the OPEB Trust and/or the protection of the Board, OPEB Trust employees, and/or OPEB

Trust agents against any losses by reason of errors or omissions or breach of fiduciary duty or negligence.

- i. To purchase fidelity bonds in the amount of no less than 10% of the OPEB Trust assets covering the Board and any other fiduciary to the OPEB Trust to protect the OPEB Trust against losses by reason of theft by fiduciaries.
- j. To verify the occurrence of statements and information submitted on contribution forms, claim forms and other forms.
- k. To keep true and accurate books and account and records of all the transactions of the OPEB Trust and to have an audit made of the OPEB Trust, its books, accounts, by a certified public accountant, annually, when necessary in the opinion of the Board, or by request of the Arlington Town Meeting.
- l. To issue such financial statements as the Board may deem proper, and to determine when and how frequently such statements shall be issued and the method for the distribution thereof.
- m. To construe the provisions of this Declaration of Trust and terms used herein, in order to effectuate the purpose of the OPEB Trust.
- n. To delegate any of their ministerial powers and duties, including but not limited to the investment and reinvestment of any monies in the OPEB Trust, to any agent or employee engaged by the Board.
- o. To perform and do any and all acts, whether or not expressly authorized herein, which the Board may deem expedient for the protection of the property held hereunder and for the administration of the OPEB Trust, although the power to do such acts is not specifically set forth within.
- p. To withdraw monies from the OPEB Trust account(s) by checks and to allow designation and authorization of an employee or trustee, with Board approval, to sign checks or make wire or electronic payments upon such specific bank accounts as the Board may designate or establish.

ARTICLE VI

LIABILITY AND INDEMNIFICATION OF TRUSTEES OR EMPLOYEE

- 6.1 Neither the Board nor any individual trustee or employee shall incur any liability by acting in good faith upon any instrument, application, notice, request, signed letter, telegram or other paper or document believed by the Board, trustee, or employee to be genuine and to contain a true statement of facts and believed to have been made, executed and delivered by the parties purporting to have made, executed, or delivered same.
- 6.2 So long as the Board, any individual trustee, or employee commits no acts of breach of fiduciary duty, willful dishonesty, or intentional violation of law, neither the Board nor any trustee or employee shall be held personally answerable or personally liable for (1) any liabilities or debts contracted by the Board, or for the non-fulfillment of contracts; or (2) for any error or judgment or for any loss arising out of any act or omission in the execution of the OPEB Trust; or (3) for the acts or omissions, whether or not performed by, or at the request of, the Board, or any employee, agent, advisor, or attorney elected or appointed by or working for the Board.
- 6.3 Neither the Board nor an individual trustee or employee shall be liable for the application of any part of the OPEB Trust or for any other liability arising in connection with the administration or operation of the OPEB Trust, except as provided herein.
- 6.4 The Board and any individual trustee or employee shall be protected from personal civil liability to the extent provided for in M.G.L. c. 32B, § 20(f) and M.G.L. c.258, and shall be indemnified by the OPEB Trust against any civil claim, action, award, compromise, settlement or judgment by reason of an intentional tort to the full extent and condition allowed by these statutes.
- 6.5 The OPEB Trust shall pay as a general expense of administration, the costs and expenses, including legal fees, for any action, suit or proceeding related to the OPEB Trust brought against the Board or any individual trustee; provided, however, that the OPEB Trust shall not indemnify the Board or any individual Trustee for expense in an action or damages awarded in such action where there is: 1) a breach of fiduciary duty; 2) an act of willful dishonesty; or 3) an intentional violation of law by the Board or an individual trustee or employee.
- 6.6 The Board, any individual trustee, or employee may rely upon and shall be protected for any action taken upon the advice, opinion, records, reports or recommendation of legal counsel or certified public accountant selected by the Board with reasonable care, in

- connection with any matter pertaining to the administration or application of the OPEB Trust. No successor trustee shall be responsible for any acts or defaults of any prior trustee, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the OPEB Trust prior to his/her becoming a trustee, nor be required to inquire into or take any notice of the prior administration of the OPEB Trust.
- 6.7 The Board may seek protection by any act or proceeding that the Board may deem necessary in order to settle their accounts; the Board may obtain a judicial determination or declaratory judgment as to any question of construction of this Declaration of Trust or as to any act thereunder. The cost and expenses of any action, suit, or proceeding brought by the Board, which costs and expenses shall include counsel fees, shall be paid from the OPEB Trust.
- 6.8 The Board may require the Arlington Town Meeting to execute a release of liability after an audit of the OPEB Trust by a certified public accountant that discloses that all affairs are in proper order, thus entitling the Board to a release in favor of the Board or any individual trustee, his/her heirs, executors, administrators and assigns.
- 6.9 The Board shall not be bound by any notice, declaration, regulations, advise or request unless and until it shall have been received by the Board at the principal place of the business of the OPEB Trust, the office of the Arlington Contributory Retirement Board located at 27 Maple Street, Suite G-11 Arlington, MA 02476
- 6.10 The Board shall receive no compensation as such for their services hereunder. However, the Board and any individual trustee shall be reimbursed from the OPEB Trust for all reasonable and necessary expenses incurred on behalf of the OPEB Trust or in connection with the Board's duties hereunder.

ARTICLE VII
CUSTODY OF TRUST FUNDS

- 7.1 The Town of Arlington Treasurer shall serve as Custodian of the OPEB Trust. All funds in the OPEB Trust shall be accounted for separately from all other funds of the Town of Arlington.
- 7.2 The Treasurer/Custodian shall establish one or more checking accounts, which may be interest bearing or non-interest bearing accounts. Such checking account or accounts shall be funded solely from the OPEB Trust, and the Custodian may draw on such checking accounts for the payment of group health insurance benefits for retirees and their dependents, all in accordance with the requirements of M.G.L. c. 32B, § 20 and for the payment or reasonable administrative expenses of the Trust Fund.
- 7.3 In establishing any such checking account at an institution, any checking account shall require Board approval, by majority vote of the Board, in advance of opening the account.
- 7.4 Further, the establishment of any such checking account shall require, to the extent permissible by the institution, an additional signatory on the account to open the account, to sign any checks drawn on the account, or to transfer any funds from the account.
- 7.5 This additional signatory shall be determined by majority vote of the Board, but shall be an active Trustee.
- 7.6 Should the additional signatory no longer be a member of the Board, he or she immediately forfeits any authority to act with regard to the account and a new signatory shall be appointed, by majority vote of the Board, within 30 days.
- 7.7 Upon written request of the Arlington Town Meeting, the custodian shall provide a report to the Arlington Town Meeting on the financial position of the OPEB Trust including any checking or investment accounts within thirty (30) days of the Arlington Town Meeting's letter.

ARTICLE VIII
AMENDMENTS; TERMINATION OF TRUST FUND

- 8.1 This Declaration of Trust may be amended by the majority vote of the Board, with written and posted notice to the Arlington Town Meeting made no less than thirty (30) days before any such amendment is made. No amendment shall be adopted which: 1) alters the OPEB Trust as then constituted or any part thereof, to a purpose or use other than those authorized herein; 2) conflicts with any applicable law or government regulation; 3) increases the burdens or obligations of the Town of Arlington; 4) conflicts in any way with any term or provision of any agreement which authorizes the creation of the OPEB Trust by the Arlington Town Meeting); or 5) affects the tax exempt status of the OPEB Trust.
- 8.2 This OPEB Trust shall terminate at the discretion of the Board, with ninety (90) days written notice to the Arlington Town Meeting, by a written execution by the Board. In no event, however, shall this OPEB Trust extend beyond the date when the corpus of the OPEB Trust is exhausted.
- 8.3 Should the purpose for which the Arlington Town Meeting created the OPEB Trust as articulated in this Declaration of Trust be impossible to achieve, any funds remaining in the OPEB Trust shall revert to the Town of Arlington.
- 8.4 Any meetings called or any actions taken by the Board shall comply with the Massachusetts Open Meeting Law, M.G.L c. 30A, §§ 18-25.

ARTICLE IX
GENERAL

- 9.1 Title to the OPEB Trust shall be vested in and remain exclusively in the Board and no employer, union, retiree, any dependent, or any other party or legal entity shall have any right, title or interest in the OPEB Trust nor any right to contributions to be made thereto, nor any claim against any party on account thereof, except only as provided from time to time by this Declaration of Trust. No contributions to be made hereunder shall be deemed wages due to Eligible Retirees.
- 9.2 The OPEB Trust shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge by any person other than the Board, and its duly authorized representatives, and by the Board or such representatives, only to

the extent and for the purposes as herein specifically provided, or as otherwise specifically authorized.

- 9.3 The OPEB Trust shall be held and maintained for the exclusive benefit of the otherwise Eligible Retirees and their dependents.
- 9.4 The Board is authorized to execute any notice, certificate or other instrument in writing and all persons, partnerships, corporations or associations may rely thereupon that the execution of any such notice or instrument has been duly authorized and is binding on the OPEB Trust and the Board.
- 9.5 The provisions of this Declaration of Trust shall be liberally construed in order to promote and effectuate the establishment and operation of the OPEB Trust herein mentioned.
- 9.6 This Declaration of Trust is created and accepted in the Commonwealth of Massachusetts. All questions pertaining to its validity, construction, and administration shall be determined in accordance with the laws of the Commonwealth of Massachusetts. Further, venue for any action arising out this Declaration of Trust will lie exclusively in the state and federal courts of the Commonwealth of Massachusetts.
- 9.7 This Declaration of Trust and any amendments hereto may be executed in one or more counterparts. The signature of a party on any counterpart shall be sufficient evidence of his/her execution hereof. Each counterpart shall be deemed an original, but all of which shall constitute one and the same Agreement.
- 9.8 The Board shall convene a meeting of the OPEB Trust, consistent with M.G.L. c. 30A, §§18-25, at least two (2) times per fiscal year (July 1st – June 30th) or further as needed.

ARTICLE X

SEVERABILITY

- 10.1 In the event that any provision of the Declaration of Trust shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provision of the Declaration of Trust; the provision of provisions held illegal or invalid shall be fully severable, and the Declaration of Trust shall be construed and enforced as if said illegal or invalid provisions had never been inserted hereto.

ARTICLE XI

QUORUM

11.1 A quorum for the Board shall consist of no less than three (3) trustees.

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IN WITNESS WHEREOF, The undersigned does hereby set their hands and seal on this
_____ day of _____, 2023

DocuSigned by:
Erud Fantini 9/20/2023
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_____,
Alfred Fantini

Trustee

DocuSigned by:
Kenneth Hughes 9/20/2023
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_____,
Kenneth Hughes

Trustee

DocuSigned by:
ida cody 9/20/2023
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_____,
Ida Cody

Officer Trustee

DocuSigned by:
Robert Jefferson 9/20/2023
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_____,
Robert Jefferson

Trustee

DocuSigned by:
Richard Keshian 9/20/2023
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_____,
Richard Keshian

Trustee